

Delivery and Installation Terms + Conditions of Sale

Each sale of Midmark Corporation ("Midmark") measurement, design validation, delivery, product management, and/or installation services (each a "Service" and collectively, "Services") and any associated equipment and/or cabinetry ("Product(s)") is governed by these Terms + Conditions of Sale ("Terms + Conditions"). Upon issuing a purchase order or the like or otherwise making payment to Midmark for the Service(s) and any Product, the buyer ("Buyer") identified on the applicable Midmark quotation ("Quotation") accepts the Quotation and these Terms + Conditions. The Quotation and these Terms + Conditions shall be the complete and exclusive terms and conditions applicable to the agreement between Midmark and Buyer; Midmark shall not be bound by Buyer's terms or conditions unless expressly agreed to in writing; any different or additional terms or conditions in any order, proposal, or acknowledgement are hereby deemed null and void and superseded by the Quotation and these Terms and Conditions.

1 Service(s) Deliverables and Obligations.

- 1.1 Midmark Service options. Buyer may purchase one or more of the following Services individually or in any combination:
 - 1.1.1 Measurements + Design Validation – Includes conducting final field measurements to verify relevant dimensions (to be taken after order placement) and validating design specifications against actual site conditions.
 - 1.1.2 Premier Delivery + Product Management – Includes a single point of contact for coordinating scheduling and logistics of delivery and managing offload and staging of Midmark equipment and/or cabinetry.
 - 1.1.3 Installation – Includes setup and installation of Midmark equipment and/or cabinetry in accordance with specifications, broom-swept cleanup (at completion), and at Buyer's request, performing a final walk-through and promptly addressing mutually agreed punch list items relating to incomplete work or work not meeting specification.
- 1.2 Exclusions. The scope of Midmark Service(s) explicitly excludes:
 - 1.2.1 Work performed outside of standard business hours (evenings, weekends, and/or holidays);
 - 1.2.2 The use of union labor or adherence to prevailing wage requirements;
 - 1.2.3 Demolition or removal of any existing equipment, fixtures, or structures;
 - 1.2.4 Electrical, plumbing, carpentry, painting, flooring, or any other trade work not specifically outlined in Section 1.1;
 - 1.2.5 Installation of any structural support required to mount new Midmark equipment and/or cabinetry; and
 - 1.2.6 Any Midmark project management beyond Midmark's coordination of Service(s) purchased.
- 1.3 Acknowledgement of use of subcontractors. Buyer acknowledges and agrees that Midmark may use subcontractors to perform the Service(s) to be provided under these Terms + Conditions.
- 1.4 Buyer's responsibilities. Buyer agrees to the following responsibilities:
 - 1.4.1 If applicable, facilitating a site visit for Midmark to finalize field measurements;
 - 1.4.2 Informing Midmark of any local laws or ordinance that may require permits or licensing;
 - 1.4.3 Providing Midmark a confirmed date for offload and installation at least 30 days before the scheduled date;
 - 1.4.4 Providing Midmark a minimum of 15 business days' notice for any schedule changes applicable to Midmark;
 - 1.4.5 Completing all construction work in the Midmark installation area prior to the scheduled delivery date, including but not limited to electrical, plumbing, HVAC, ceiling work, flooring, and painting, and ensuring timely completion of any changes to same required to accommodate proper installation of Midmark equipment and/or cabinetry;
 - 1.4.6 If applicable, installing all necessary (i) in-wall structural support for any Midmark cabinetry and/or wall-mounted Midmark equipment, and/or (ii) structural and lateral support for any ceiling-mounted Midmark lighting;
 - 1.4.7 If applicable, notifying Midmark of any radiant heating systems present in the flooring, and if so, then providing guidance on attaching any Midmark equipment to such floors;
 - 1.4.8 Ensuring there is adequate parking space available for offloading and unloading a 53-foot trailer in close proximity to the Midmark installation area on the day(s) of delivery;

- 1.4.9 Designating a staging area that can accommodate indoor storage of all Midmark equipment and/or cabinetry near the installation area on the day(s) of delivery;
- 1.4.10 Preparing and maintaining a clear Midmark installation area and ensuring it is free of any building materials or construction equipment during the duration of the Midmark installation;
- 1.4.11 Providing sufficient lighting, electrical services, HVAC services, and access to useable water to support the process during the duration of the Midmark installation;
- 1.4.12 Providing a dumpster for disposal of Midmark packaging materials and other minor waste during the duration of the Midmark installation; and
- 1.4.13 Agreeing to cover any additional charges incurred by Midmark as a result of failure to meet any of the above responsibilities.

2 Pricing, Ordering, and Payment.

- 2.1 Price; taxes. Prices quoted by Midmark are firm for the period stated in the applicable Quotation. After that period, prices are subject to change and will be adjusted to the prevailing Midmark prices and rates at the time of order acceptance. All prices are exclusive of federal, state, and local taxes. If Midmark is required to pay or collect any tax or duty on behalf of Buyer, then such amounts shall be added to the price and payable by Buyer.
- 2.2 Order. No order shall be binding on Midmark unless and until Midmark provides written acknowledgment of such order. Buyer acknowledges that Midmark reserves the right, in its sole discretion, to reject any order for any reason. After Midmark acknowledges the order, Midmark shall provide an estimated offload and installation timeframe.
- 2.3 Payment. Payment obligations vary depending on whether Buyer has been granted payment terms by Midmark.
 - 2.3.1 If Buyer has not been granted payment terms by Midmark, then:
 - 2.3.1.1. For Service(s), payment in full is due at the time of order placement—Midmark will not schedule or perform Service(s) until payment is received; and
 - 2.3.1.2. For Product(s), payment in full is due at the time of order placement—Midmark will not process or ship Product until payment is received.
 - 2.3.2 If Buyer has established payment terms with Midmark, then:
 - 2.3.2.1. For Service(s), Midmark will invoice Buyer upon completion of Service(s) and payment is due thereafter in accordance with the payment terms stated on the invoice; and
 - 2.3.2.2. For Product(s), Midmark will invoice Buyer upon shipment of Product and payment is due thereafter in accordance with the payment terms stated on the invoice.
 - 2.3.3 Any amounts not paid by Buyer when due to Midmark shall be subject to interest charges, from the date due until paid, at the rate of one and one-half percent per month, or the highest interest rate allowable by law, whichever is less, compounded and payable monthly; Buyer shall pay all collection expenses, including but not limited to attorneys' fees, incurred by Midmark in the collection of amounts owed by Buyer.

3 Delivery, Risk, and Title.

- 3.1 Delivery date; delay. Any promised Product delivery and/or Service performance date(s) is(are) the best estimate(s) possible, based upon current and anticipated factory loads and project scheduling. MIDMARK SHALL HAVE NO LIABILITY FOR LOST PROFITS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES DUE TO DELAYS.
- 3.2 Transportation; risk of loss. Unless otherwise stated in the applicable Quotation or otherwise agreed by Midmark in writing, Buyer is responsible for all freight charges, if any, separately invoiced by Midmark (on-site delivery, to the extent applicable, is included in the applicable purchased Service). Risk of loss or damage to the Product(s) shall transfer to Buyer upon arrival at the designated delivery location. Midmark shall select the method and route of shipment unless otherwise specified in writing by Buyer and accepted by Midmark.
- 3.3 Title; security interest. Any Product title shall remain with Midmark until the complete purchase price is paid by Buyer. Midmark shall retain a security interest in, and right to repossess, any such Product until it is paid in full.
- 3.4 Notice of defect. Notice of any defects or claims of any nature (except warranty) must be made within five business days of any Product delivery or Service performance.

4 Changes and Returns.

- 4.1 Changes. Any change order, including but not limited to complete or partial order termination, reduction in quantity, and rescheduling of any Product delivery or Service performance, by Buyer will not be considered effective until mutual agreement has been reached between Buyer and Midmark as to the effect of any changes in price, delivery and/or performance schedule, and

other conditions of the order. Midmark will be entitled to commercially reasonable compensation, which shall take into account, among other things, expenses incurred by Midmark, increased costs incurred by Midmark, and profit reasonably anticipated by Midmark. Additional charges relating to schedule changes include but are not limited to: (i) \$6,500 for schedule delay; (ii) \$2,650 per crew member for delays after a crew has been dispatched; and (iii) \$700 per truckload per week for storage fees.

- 4.2 **Returns.** Product Returns will not be accepted for any reason without Midmark's prior written authorization. If Midmark does provide written authorization of a return, then Buyer shall be responsible for paying all return shipping costs, as well as any handling, restocking, and related fees associated with the return, as determined by Midmark in its sole discretion.

- 5 **Termination.** Midmark may terminate or partially terminate Services and/or Product delivery upon immediate written notice to Buyer upon the occurrence of any of the following: (i) failure of Buyer to accept delivery of any Product or to pay any indebtedness to Midmark when due, accompanied by a failure within ten days after demand therefor, to fully pay the same; (ii) failure by Buyer to perform any of its obligations, other than the payment of any indebtedness to Midmark, after Buyer shall have been notified by Midmark of such failure and in Midmark's opinion shall have failed to correct the same within 30 days after receipt of such notice; or (iii) Buyer becomes insolvent, ceases doing business in the ordinary course, makes an assignment for the benefit of creditors, becomes subject to any bankruptcy, receivership, or insolvency proceeding, whether voluntary or involuntary, is liquidated, dissolved, merged, or consolidated, or has a receiver or trustee appointed for Buyer or any of its assets. Termination shall not release or affect, and these Terms + Conditions shall remain fully operative as to, any obligations or liabilities incurred by Buyer prior to the effective date of such termination; provided, that all indebtedness of Buyer to Midmark shall become immediately due and payable on the effective date of termination without demand. Any orders received from Buyer that have not been shipped prior to Buyer's receipt of notice of termination or the effective date of termination, whichever shall occur first, shall only be shipped cash in advance.

- 6 **Proprietary Information.** Any specifications, drawings, plans, notes, instructions, or technical data furnished by Midmark to Buyer and marked or reasonably understood to be confidential or proprietary (collectively, "Proprietary Information") shall remain the property of Midmark. Buyer shall use such Proprietary Information solely as necessary to fulfill its obligations under this Agreement and shall not disclose it to any third party without Midmark's prior written consent, except to Buyer's employees, agents, or contractors who have a need to know and are bound by confidentiality obligations no less protective than those set forth herein. Upon Midmark's written request, Buyer shall promptly return or destroy all copies of such Proprietary Information.

7 **Warranties and Disclaimer.**

- 7.1 **Service(s).** Midmark warrants to Buyer that the Service(s) provided hereunder will be performed in a professional and workmanlike manner. This warranty shall expire one year from the date of Service.
- 7.2 **Product(s).** Buyer agrees that Midmark's liability with respect to any Product shall be limited solely to Midmark's limited warranties for the Product (available [HERE](#)), as may be changed or modified from time to time by Midmark in its sole discretion. This warranty runs to the end-user; if Buyer is not the end-user, then Buyer acknowledges that it is not authorized to offer any other warranty regarding any Product(s) on Midmark's behalf.
- 7.3 The exclusive remedies under the applicable warranty are re-performance of Service(s) and repair or replacement of defective Product(s) or parts. THE REMEDIES SPECIFIED HEREIN ARE THE SOLE REMEDIES OF BUYER.
- 7.4 THE WARRANTIES SET FORTH IN THESE TERMS + CONDITIONS CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE MATERIALS, WORK PRODUCT, GOODS, AND/OR SERVICES PROVIDED BY MIDMARK UNDER THESE TERMS + CONDITIONS AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- 8 **Indemnification.** To the fullest extent permitted by applicable law, each party shall indemnify, defend, and hold harmless the other party and its directors, officers, employees, and agents from and against third-party claims for bodily injury, death, or damage to tangible property, but only to the extent caused by the indemnifying party's negligence or willful misconduct in connection with the Services or the subject matter of these Terms + Conditions. Buyer shall also indemnify, defend, and hold harmless Midmark from and against third-party claims to the extent arising out of Buyer's site conditions, Buyer-furnished information or instructions, intellectual property infringement, or Buyer's failure to perform its responsibilities under these Terms + Conditions. No party shall be obligated to indemnify the other for the other party's own negligence or willful misconduct. This Section is intended to comply with any applicable anti-indemnity statute.

9 **Limitation of Liability.**

- 9.1 IN NO EVENT SHALL MIDMARK BE LIABLE TO BUYER OR TO ANY THIRD PARTY WITH RESPECT TO THE SUBJECT MATTER RELATED TO THESE TERMS + CONDITIONS FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, TIME, OR BUSINESS OPPORTUNITIES, LOST PROFITS, INCONVENIENCE, DAMAGE TO GOOD WILL OR REPUTATION, OR THE LIKE), REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

- 9.2 IN NO EVENT SHALL THE TOTAL LIABILITY OF MIDMARK TO BUYER FOR ALL DAMAGES ARISING OUT OF OR RELATING TO THESE TERMS + CONDITIONS EXCEED THE AMOUNTS PAID TO MIDMARK UNDER THESE TERMS + CONDITIONS.

10 General Provisions.

- 10.1 Force majeure. Midmark shall not be liable for any delay or failure in performance to the extent caused by events beyond Midmark's reasonable control, including acts of God, fire, flood, severe weather, war, terrorism, labor disputes, epidemics, transportation delays, material shortages, or governmental action. Midmark's time for performance shall be extended accordingly, and Midmark shall not be liable for any damages, penalties, liquidated damages, backcharges, or setoffs arising from such delay or failure.
- 10.2 Relationship of the parties. The parties hereto are independent contractors and as such, at no time shall either party be considered an employee, employer, agent, or legal representative of the other. Neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other party.
- 10.3 Third party beneficiaries; assignment. These Terms + Conditions are being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever. Buyer's rights and obligations hereunder may not be assigned or delegated without the prior written consent of Midmark; Midmark may freely assign its rights and obligations.
- 10.4 Entire agreement; conflict. The Quotation, any associated Midmark-rendered drawings, and these Terms + Conditions set forth the entire agreement between the parties with respect to the subject matter hereof and supersede any and all previous agreements, either written or oral, between the parties or between Buyer and a third-party as it relates to the Service(s) and any Product described herein. Any additional, different, or conflicting terms and conditions are hereby objected to by Midmark, shall be inapplicable, and shall not be binding in any way on Midmark.
- 10.5 Severability. The invalidity of any part of these Terms + Conditions shall not affect the validity of the remaining provisions.
- 10.6 GOVERNING LAW; VENUE; DISPUTE RESOLUTION. Except to the extent prohibited by applicable law, these Terms + Conditions shall be governed by the laws of the State of Ohio without regard to its conflict of laws principles. Any dispute arising primarily from onsite Services shall first be submitted to non-binding mediation and, if not resolved within 30 days after a written request for mediation, shall be resolved by binding arbitration administered by the American Arbitration Association ("AAA") before one arbitrator selected by agreement of the parties or, failing agreement, by AAA. Unless applicable law requires otherwise, such mediation and arbitration shall occur in the state where the applicable project is located, and the parties shall share equally the mediator's, arbitrator's, and AAA administrative fees, subject to reallocation in the final award. Any other action arising out of these Terms + Conditions may be brought in an Ohio state or federal court, and the parties submit to the jurisdiction of such courts.
- 10.7 Statute of limitations. All claims or suits against Midmark must be made within one year of the date the cause of action occurred (regardless of when they were discovered) or be forever barred.
- 10.8 Waiver. No waiver shall be effective against Midmark unless Midmark agrees to same in writing.